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# LATE TESTIMONY

TO THE HOUSE COMMITTEE ON HOUSING

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

WEDNESDAY, MARCH 21, 2012  
9:00 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE RIDA T.R. CABANILLA, CHAIR,  
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 2256 - RELATING TO CONDOMINIUMS

## DESCRIPTION:

This measure proposes to allow condominium boards to authorize the installation of separate utility meters, notwithstanding the provisions of a project's declaration or an association's bylaws, provided that the association pays the cost of installing the meters.

## POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports Senate Bill No. 2256.

## COMMENTS:

Hawaii's consumers pay billions of dollars each year for electricity that is generated using imported oil. Energy conservation and efficiency are important means

Senate Bill No. 2256  
House Committee on Housing  
Wednesday, March 21, 2012, 9:00 a.m.  
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by which the State of Hawaii can wean itself from its dependence upon imported petroleum.

The Consumer Advocate supports this measure as it has the potential to make the actual consumer of the electricity used in condominium apartments financially responsible for his own energy usage. There are a number of older condominiums in Hawaii whose apartments are not separately metered. Allowing the board of directors of those condominiums the ability to require separate metering in spite of condominium by-laws and declarations that often make such a change difficult, if not impossible, would be an important step in improving energy conservation.

Furthermore, this bill provides that the cost of installing separate meters to condominium apartments will be borne by the association, not the electric utility. This means that all electric utility ratepayers will not be subsidizing these costs.

Thank you for this opportunity to testify.

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March 21, 2012

Representative Rida T.R. Cabanilla, Chair  
Representative Ken Ito, Vice Chair  
Committee on Housing

## LATE TESTIMONY

RE: BILL: S.B. No. 2256  
DATE: March 21, 2012  
TIME: 9:00 a.m.  
PLACE: Conference Room 325

Dear Representatives Cabanilla and Ito and Members of the Committee:

Thank you for the opportunity to present testimony on S.B. No. 2256. This testimony is submitted on my behalf as a member of the Hawai'i State Bar Association and as the lawyer for many planned community associations. I believe I am very qualified to testify on this issue. I have twice written the article for the Hawai'i State Bar Association entitled "Community Associations" in its periodic 3 volume publication: Hawaii Real Estate Law Manual Vol. II. I have also written and taught the GRI course for Realtors® in Hawai'i for the Hawai'i Association of Realtors® and for its various statewide boards. During that time, I have served and testified on behalf of the HSBA Subcommittee on Community Associations (part of the Real Property Section) and on the Legislative Action Committee for CAI for which I have also testified. I have been selected by my peers over the last few years as one of the "Best Lawyers in America." I have practiced community association law for more than 30 years in Hawai'i.

Many older Condominium Projects in Hawaii (for which construction commenced before January 1, 1978) were constructed so that a single meter measures the consumption of utilities (e.g., electricity, water, sewer). (See changes made for newer projects in HRS §514B-42.) Thus, in buildings older than 34 years (there are many condos in this category as condos were first permitted by statute in 1961 in Hawai'i) utility costs are not measured by the actual usage of the various owners or occupants of Units in the Project but instead are paid for as a common expense based on each Unit's undivided common interest. That situation is unfair to both owners in the Project and to the Association. If an owner knows that his electric bill will not be increased

Representative Rida T.R. Cabanilla, Chair  
Representative Ken Ito, Vice Chair  
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because of his cavalier usage, he may decide to leave on the air conditioner or the lights when he leaves his Unit. This is a big problem for resort condominiums where visitors simply leave on the air conditioning with the doors open. Thus, the Association inevitably pays a higher electric bill than it would if the individual members had to pay for their own utility use. It is also unfair to other owners because a three bedroom Unit (that generally has a higher undivided interest than a studio Unit) will then pay more in electric costs than a studio Unit, regardless of whether either Unit is even occupied or used.

A prior legislature recognized the unfairness of this situation when it enacted “§514B-42 Metering of Utilities,” which provides that all Projects developed after 1978 would have to provide separate meters for utilities or for another fair means of billing utilities in the governing documents of a mixed use (*e.g.*, residential and commercial) Project:

**§514B-42 Metering of utilities.** (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of such utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. . . .

Unfortunately, that provision only relates to Projects developed after 1978: “The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.” Condominium projects have been developed in Hawaii since 1961 and thus many Projects cannot benefit from this language. Also, I would ask that the Committee add language to clarify that all condominium associations (mixed use or otherwise) be able to avail themselves of this opportunity.

Modern technology will now permit metering of utilities using computers and wireless internet connections for a reasonable price regardless of the original construction of the Project. There should be no difference in treatment of older Projects with regard to this issue than newer Projects especially given the new reasonably priced technology. This bill will result in significant savings in electricity and water in Hawai‘i, an important public policy reason to enact this legislation.

Thank you for the opportunity to submit this testimony. If you have any questions, I can be reached at 697-6006 or by email at [jneeley@alf-hawaii.com](mailto:jneeley@alf-hawaii.com).

Representative Rida T.R. Cabanilla, Chair  
Representative Ken Ito, Vice Chair  
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Sincerely,

ANDERSON LAHNE & FUJISAKI LLP  
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*/s/ Joyce Y. Neeley*

Joyce Y. Neeley